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January 21, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: September 11, 2008

Case Number: TSO-0673

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual's access authorization should be restored. 1/

I. BACKGROUND

The individual is an employee of a Department of Energy (DOE) contractor, and has held a DOE access authorization continuously from 1984 until it was suspended in connection with the current proceeding. According to a February 2008 Incident Report, on January 23, 2008, the individual admitted an alcohol problem to his division leader and immediately entered a ten-week intensive outpatient treatment program. In March 2008, the DOE conducted a Personnel Security Interview with the individual (the 2008 PSI) to address the individual's alcohol problem and his treatment. In addition, the individual was evaluated in May 2008 by a DOE-consultant psychiatrist (the DOE-consultant Psychiatrist), who issued a Psychiatric Report containing her conclusions and observations.

1/ Decisions issued by the Office of Hearings and Appeals (OHA), with names and other personal identifying information deleted, are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine at <http://www.oha.doe.gov/search.htm>.

In late July 2008, the Manager for Personnel Security of the DOE area office where the individual is employed (the Manager) issued a Notification Letter to the individual. Enclosure 2 to this letter, which is entitled "Information Creating a Substantial Doubt Regarding Eligibility for Access Authorization," states that the individual's behavior has raised security concerns under Sections 710.8(h) and (j) of the regulations governing eligibility for access to classified material. Specifically, with respect to Criteria (h) and (j), the DOE-consultant Psychiatrist diagnosed the individual as meeting the criteria for "Alcohol Dependence, in Early Full Remission", as specified in the Diagnostic and Statistical Manual of Mental Disorders IV-TR (DSM-IV TR), and found that this condition causes, or may cause, a significant defect in the individual's judgment or reliability.

The Enclosure also refers to the following information concerning the individual's use of alcohol:

1. In January 2008, he reported to his division leader that he believed he had an alcohol problem and needed help. He was immediately referred to an Intensive Outpatient Program and was told by a treating psychologist that he was addicted to alcohol.
2. From 1997 until January 2008, he consumed alcohol on a daily basis, drinking as much as four to eight alcoholic drinks within a day. He drank to the point of intoxication three to four times per week.
3. In January 2008, he experienced alcohol withdrawal syndrome that included significant anxiety and restlessness associated with insomnia, tremors, dry heaves, sweating, dizziness, lightheadedness, alcohol cravings, abdominal cramps, and problems sleeping.
4. In the last 20 years, he has driven while intoxicated three or four times a month.
5. Since 1977, he tried to quit drinking about ten times. Despite his efforts to quit, he returned each time to his excessive alcohol use.
6. He experienced hangovers in the past and has gone to work with a hangover.
7. From 1977 to 2007, he recalled having about half a dozen blackouts that included his not remembering events from the night before.

8. His mother and a couple of his friends have expressed concern about his excessive alcohol use.

9. He gave up recreational activities because he would rather drink. In addition, he noticed his performance in golf was getting bad, and he attributed it to the effects of alcohol.

Enclosure 2 to July 2008 Notification Letter, citing the 2008 Incident Report, the 2008 PSI, and the 2008 Psychiatric Report.

II. *THE DECEMBER 2008 HEARING*

On August 21, 2008, the individual requested a hearing (hereinafter "the hearing") to respond to the concerns raised in the Notification Letter. At that time, he also asserted that he accepts the DOE-consultant Psychiatrist's diagnosis, and that he is actively following the rehabilitative measures recommended by her and by his employer's occupational medicine department. Individual's August 21, 2008 Response to DOE Concerns.

At the hearing convened in this matter in December 2008, testimony was received from nine persons. The DOE presented the testimony of the DOE-consultant Psychiatrist. The individual, who was not represented by counsel, testified and presented the testimony of the psychologist who directed his outpatient treatment (the Treating Psychologist), his employer's occupational medicine psychologist (the Employer's Psychologist), his Alcoholics Anonymous (AA) sponsor, his girlfriend, his supervisor, friend/co-worker, and a friend/former supervisor.

The testimony at the hearing focused on the individual's efforts to mitigate the concerns raised by his diagnosis of Alcohol Dependence by establishing abstinence from alcohol and participation in recovery activities. The hearing also focused on the length of time in recovery necessary for this individual to establish that he is at low risk for relapsing into the misuse of alcohol.

III. *APPLICABLE STANDARDS*

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his

eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a presumption against granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security test" for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. *Personnel Security Hearing*, Case No. VSO-0002 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. *Personnel Security Hearing*, Case No. VSO-0005 (1995), *aff'd*, Case No. VSA-0005 (1995). See also 10 C.F.R. § 710.7(c).

IV. ANALYSIS

In his testimony at the hearing, the individual stated that he sought treatment in January 2008 after he recognized that he had a problem with alcohol and needed assistance to stop drinking. He testified that he recognizes that he is alcohol dependent, that he has maintained his sobriety since January 24, 2008, and that he is committed to ongoing sobriety and to maintaining that sobriety through recovery activities. TR at 79-80, 86, 96-97. He testified and submitted documentation indicating that he successfully completed a ten-week intensive outpatient treatment program in April 2008, and that he has attended weekly aftercare meetings since August 18, 2008. TR at 94-95, Individual's Exhibits 2 and 3. The individual also testified and submitted records indicating that he has attended AA meetings five or six times a week since January 24, 2008, for a total of 261 meetings prior to the December hearing. *Id.*, Individual's Exhibit 1.

The individual testified that four days to a week after he ceased using alcohol, he began to feel better, and that he has experienced no cravings for alcohol since that initial period. TR at 84-85.

He stated that he is highly committed to maintaining his sobriety and his recovery program because he has seen how his life has benefitted. TR at 83. He testified that he experiences less stress in the workplace, and that he has strengthened his social contacts with friends and family. TR at 80, 83.

I find that the testimony and evidence presented at the hearing provides sufficient corroborative support for the individual's assertion that he has been abstinent from alcohol since January 24, 2008. The individual immediately entered an outpatient treatment program with the Treating Psychologist, and started to attend AA meetings on a frequent basis. He also maintained contacts with his Employer's Psychologist and has submitted to weekly random alcohol breath tests in the workplace for the last ten months. The Treating Psychologist, the Employer's Psychologist and his AA sponsor all believe that the individual has maintained his sobriety since January 24, 2008. TR at 24, 75, 18-20. The individual's girlfriend, his friend/co-worker, and his friend/former supervisor all testified that they know the individual well, and have not seen or suspected that he has used alcohol since he began intensive alcohol recovery activities on January 24, 2008. TR at 67-70, 64-65, 39-41. Based on the individual's successful participation in his recovery activities, his random drug testing, and the opinions expressed by these witnesses, I find that the individual has been abstinent from alcohol since January 24, 2008. Therefore, I believe that as of the date of the hearing, the individual has been abstinent for more than ten months.

In the administrative review process, it is the Hearing Officer who has the responsibility for deciding whether an individual with alcohol problems has established rehabilitation or reformation. See 10 C.F.R. § 710.27. The DOE does not have a set policy on what constitutes rehabilitation and reformation from alcohol diagnoses, but instead makes a case-by-case determination based on the available evidence. Hearing Officers properly give a great deal of deference to the expert opinions of psychologists and other mental health professionals regarding the likelihood of relapse. See, e.g., *Personnel Security Hearing*, Case No. VSO-0027 (1995) (finding of rehabilitation); *Personnel Security Hearing*, Case No. VSO-0015 (1995) (finding of no established rehabilitation).

After hearing the testimony of the individual and his witnesses, DOE-consultant Psychiatrist testified that she believed that the individual was now at a low risk of relapse. She stated that the individual's self reporting of his alcoholism and voluntarily seeking assistance for his sobriety are highly mitigating factors in assessing his risk of relapse. She stated that she recognized

at the time of her May 2008 evaluation that the individual's recovery was driven by internal motivation as well as outside factors, and that testimony at the hearing convinced her that his initial commitment was lasting. TR at 98-99. She stated that the positive opinions of the individual's commitment to sobriety and recovery activities expressed by his Treating Psychologist and his Employer's Psychologist carry weight in light of their objectivity and professional training, and she believed that the individual has been honest throughout his recovery process. TR at 100-101. She concluded that the individual, having completed ten months of sobriety and recovery activities was now at the low risk of relapse usually associated with a full year of sobriety and recovery. TR at 102. She stated that the individual's frequent AA meeting attendance compensates somewhat for his not having a full year of sobriety, and that the individual's relationship with a girlfriend who is committed to AA also strengthens his prognosis. TR at 102-103.

The Treating Psychologist testified that the individual's current risk of relapse is "very low." TR at 27. He stated that typically a full year of sobriety with recovery activities is necessary to achieve a low risk of relapse. However, he believes that when the individual volunteered himself for alcohol treatment, it indicated that he had a strong desire to make "a huge change" in his life, that the individual has demonstrated his commitment to sobriety by frequent attendance at AA. He also noted that through his recovery efforts, the individual has created a support system of non-drinking relationships and activities. TR at 29-33.

The Employer's Psychologist stated that in his career, he has seen only four or five cases of high commitment to sobriety, and that the individual is one. He testified that he believes that the individual's prognosis after more than ten months of sobriety and recovery is "very, very good". He stated that in this instance, it is not necessary for the individual to establish a full year of sobriety and recovery activities, and concluded that the individual's current low risk for relapse would not significantly improve over the next two months. TR at 76-77. He testified that an additional two months of sobriety are not necessary in this case because of the individual's heavy involvement in AA, his good relationship with his AA sponsor, and because the individual's girlfriend also is committed to sobriety. TR at 77.

In general, medical professionals believe that remaining sober for a full year is a significant watershed in the process of reaching rehabilitation and reformation, and a good indicator of commitment to sobriety. See *Personnel Security Hearing*, Case No. VSZ-0276

(2000), and cases cited therein. However, in this instance, I agree with the conclusion of all three medical professionals that ten months of sobriety is sufficient. My positive assessment of the individual's demeanor and of the evidence presented at the hearing convince me that the individual is highly committed to his ongoing sobriety, and that he has developed the personal skills and support network necessary to maintain his sobriety and to avoid relapses. I find that he is actively engaged in frequent AA meetings, in working with his AA sponsor, and in aftercare meetings. The individual testified that he and his AA sponsor are in the process of reading the AA "big book" together, and that they currently are venturing into the fourth AA step of identifying resentments and life situations that played a role in alcoholism, and getting them "on the table." TR at 88.

In light of this evidence, I accept the conclusions of the medical professionals that, in this instance, ten months of sobriety are sufficient for the individual to demonstrate that he is at low risk for relapsing into alcohol use. 2/ I therefore conclude that the individual has established rehabilitation and reformation from his alcohol dependence after ten months of sobriety and participation in recovery activities. See *Personnel Security Hearing*, Case No. VSO-0389 (2000) (individual with a demonstrated commitment to sobriety found to have established rehabilitation and reformation from alcohol dependence with 10.5 months of sobriety and recovery activities at the time of the hearing).

2/ In this regard, I note that medical professionals often require a full year of abstinence to establish rehabilitation, because a one year abstinence period allows an individual to go through a sufficient number of ups and downs that normally occur within a year to test whether he can withstand normal stresses without turning to alcohol. See *Personnel Security Hearing*, Case No. TSO-0150 (2005). In the present case, testimony indicates that the individual successfully coped with the death of his father while maintaining his sobriety, and enjoyed a sober and happy Thanksgiving with his family. See, testimony of Treating Psychologist at TR 24, Friend/Co-worker at TR 62, and Individual at TR 86. I therefore find that the individual already has demonstrated that he can deal with the seasonal activities and other significant stressors that can trigger relapses.

V. CONCLUSION

For the reasons set forth above, I find that the individual suffers from alcohol dependence subject to Criteria (h) and (j). Further, I find that this derogatory information under Criteria (h) and (j) has been mitigated by sufficient evidence of rehabilitation and reformation. Accordingly, after considering all of the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. It therefore is my conclusion that the individual's access authorization should be restored. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: January 21, 2009